

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
REPLY BRIEF**

76-1069

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

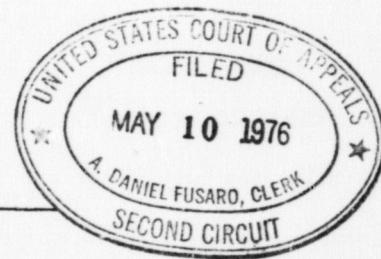
JOHN DININO, et al.,

Defendant-Appellant.

On appeal from a judgment of the United
States District Court for the Southern
District of New York

REPLY BRIEF FOR APPELLANT

JOHN DININO



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REPLY BRIEF FOR APPELLANT
JOHN DININO

(a) The Government's Facts Are Inaccurate and Misleading

The following portions of the government's statement of facts contain material omissions of fact are materially misleading:

1. The second full paragraph on page 4. Compare Dinino's brief, page 4 and record citations*.
2. The second full paragraph on page 5. Compare Dinino's brief, pp. 5-6 and record citations.
3. The second full paragraph on page 6. Compare Dinino's brief, page 7 and record citations.
4. The entire account of Ronald Levine's testimony at pages 6-8. Compare Dinino's brief pages 11-14 and record citations.
5. The second full paragraph on page 9. Compare Dinino's brief page 10 and record citations.
6. The entire account of Philip Cassese's testimony at pages 10-11. Compare Dinino's brief, pages 16-20 and record citations.

* The 581 page record is reproduced in full in Dinino's Appendix - and the facts as set forth in his brief contain comprehensive citations to that record.

7. The first two paragraphs on page 14, by reference to the government's own record citations. The following statements of fact are flatly inaccurate:

1. The continual statements that the grand jury testimony of Cassese and Levine was admitted without objection. See Trial record pages 206-213 and 268-269 for the objections to and argument on the use of prior grand jury testimony as substantive evidence. See also pages 564-570 for objections and mistrial motion when the Levine grand jury testimony was read to the jury.

2. The statement (Govt. Br 26) that no objection was made to those portions of the prosecutor's summation which Dinino cites as error. (Dinino Br. pages 22-24 and 39-41). The objections and motions for mistrial appear at pages 451 and 507-508 of the trial record.

3. The attribution of a concession where none was made. Compare Govt. Br. 30 with Dinino's Br. 41.

(b) The Government's Legal Argument
is Unresponsive To The Issues In The Case.

The Government has not addressed itself to the following arguments:

1. That under U.S. v DeLutro, 435 F.2d at 257, the trial court erred in charging that a witness' denial of threats was not binding even if believed. Compare Dinino Br. 42-43 and Govt. Br. 31. Defense took specific exception to this portion of the charge. (A.557)

2. The failure to answer the Vachon v New Hampshire, 414 U.S. 478 argument relating to the conspiracy count (Dinino Br. 34-35) and to the substantive count relating only to DeVito (Dinino Br. 35-36).

3. The failure to respond to the Dyer v McDougall, 201 F.2d 265, 269 arguments.

4. The failure to respond to the argument that Rule 801 (d) (1) is addressed only to the admissibility of evidence; and that the commentary to the Rule, the California v Green footnote (399 U.S. at 163-164, N.15), and the Vachon case, supra, require a greater evidentiary basis than Rule 801 (d) (1) testimony to sustain a verdict. (Dinino Br. 33).

Dated: MAY 7, 1976

Respectfully submitted,
KRAVET, HOEFER & RYAN, ESQS.
Counsel for Appellant
John Dinino

I certify that a copy of
the witness was served
by me this date on
the attorney for the appellee

May 7, 1976 Graham W. Oh